1972-1 C.B. 60; 1972 IRB LEXIS 389, *;
REV. RUL. 72-112

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Section 165. - Losses

26 CFR 1.165-8: Theft losses.

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Ransom payments qualify as a theft loss deduction if the taking of the money was illegal under the law of the State where it occurred and the taking was done with criminal intent.

Advice has been requested whether extortion payments, under the circumstances described below, qualify as a theft loss for purposes of *section 165(c) (3) of the Internal Revenue Code* of 1954.

A taxpayer's child was kidnapped. Under threats of injury to the child, the kidnappers extorted ransom payments in the amount of 25*x* dollars from the taxpayer. The kidnapping, ransom demand, and ransom payments all occurred in the same state.

Section 165(c) (3) of the Code allows individuals to deduct losses not connected with a trade or business to the extent that each loss exceeds 100 dollars "if such losses arise from fire, storm, shipwreck, or other casualty, or from theft."

Section 1.165-8(d) of the Income Tax Regulations provides that for the purposes of section 165 of the Code the term theft shall be deemed to include, but shall not necessarily be limited to larceny, embezzlement, and robbery.

The laws of the state where the kidnapping occurred distinguish the crimes of extortion and theft. The crime of extortion is defined, in pertinent part, as the obtaining of property from another, with his consent by a wrongful use of force or fear, the fear being such as may be induced by a threat to do an unlawful injury to the person or property of the individual threatened or of a third person.

The state law regarding theft states that every person who shall feloniously steal, take, carry, lead or drive away the personal property of another is guilty of theft.

The primary question in the instant case is whether the taxpayer has sustained a theft loss for the purposes of section 165(c) (3) of the Code even though the taking of the taxpayer's property does not amount to the technical statutory crime of "theft" under local law.

The court in *W. Sam Edwards v. Arthur C. Bromberg, 232 F.2d 107 (1956),* defined theft as "a word of general and broad connotation, intended to cover and covering any criminal appropriation of another's property to the use of the taker, particularly including theft by swindling, false pretenses, and any other form of guile." The court also stated that whether a loss from theft occurs depends upon the law of the jurisdiction where it was sustained and the exact nature of the crime, whether larceny or embezzlement, of obtaining money under false pretenses, swindling or other wrongful deprivations of the property of another, is of little importance so long as it amounts to theft.

Considering the broad general meaning of theft, it must be presumed that Congress used the term "theft" so as to cover any theft, or felonious taking of money or property by which a taxpayer sustains a loss, whether defined and punishable under the penal codes of the states as larceny, robbery, burglary, embezzlement, extortion, kidnapping for ransom, threats, or blackmail.

Thus, to qualify as a "theft" loss within the meaning of section 165(c) (3) of the Code, the taxpayer needs only to prove that his loss resulted from a taking of property that is illegal under the law of the state where it occurred and that the taking was done with criminal intent. See *Louisa B. Gunther Farcasanu v. Commissioner, 436 F.2d 146 (1970),* affirming per curiam, *50 T.C. 881 (1968); Nona R. Johnson v. United States, 291 F.2d 908 (1961);* and *William J. Powers v. Commissioner, 36 T.C. 1191 (1961).*

In this case, even though the taking of the taxpayer's money did not amount to the statutory crime of "theft" under local law, the taking of the taxpayer's money was illegal under the law of the State where it occurred and the taking was done with criminal intent.

Accordingly, it is held, in the instant case, that the taxpayer is entitled to a theft loss deduction under section 165(c) (3) of the Code.